



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2982



Southern New Hampshire University
Attn: John C. Miles, Vice President
Administration and Finance Department
2500 North River Road
Manchester, NH 03106-1045

**ADMINISTRATIVE FINE
BY CONSENT**

NO. AF 03-041

I. INTRODUCTION

This Administrative Fine by Consent is issued by the Department of Environmental Services, Water Division (the "Division"), to Southern New Hampshire University with the consent of John C. Miles, Vice President of the Administration and Finance Department, pursuant to RSA 485-A:22, V. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having main offices at 29 Hazen Drive, Concord, NH.
2. Southern New Hampshire University ("SNHU") is a private university having a mailing address of 2500 North River Road, Manchester, NH 03106-1045.

III. BACKGROUND

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES ("Commissioner") has adopted Env-Ws 401–405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the State's waters.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to this program. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. On April 2, 2003, SNHU rinsed out mixing drums and spray equipment used in the application of orange field marking paste in the driveway of the maintenance yard. The wash water from the operation drained to the storm drain and ultimately to the Merrimack River. An orange plume appeared in an intermittent stream draining to the Merrimack River and subsequently in the Merrimack River.
4. SNHU does not possess a permit issued pursuant to RSA 485-A:13.

5. Pursuant to the laws of 1967, 311:1, XLIX and LVI, the Merrimack River and its tributaries are classified as Class B waters.
6. RSA 485-A:13, I(a) provides that “[i]t shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the [DES].”
7. NH Code of Administrative Rules Env-Ws 1703, Surface Water Quality Standards, Section 1703.10 (b) Color, states “Class B waters shall contain no color in such concentrations that would impair any existing or designated uses, unless naturally occurring.”

IV. ALLEGATIONS

1. SNHU violated RSA 485-A:13 by discharging wastewater to a surface water of the State without first obtaining a written permit from DES.
2. SNHU violated Env-Ws 1703.10 (b) by discharging wastewater that resulted in an orange plume in the Merrimack River tributary and in the Merrimack River.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. For violating RSA 485-A:13, I(a), Env-C 603.05(a) specifies a fine of \$2,000 per 5,000 gallons or portion thereof discharged or \$2,000 per hour or portion thereof that the sewage or other wastes are discharged, whichever is greater. Based on information provided by SNHU, an unknown volume of field marking paste wash water was discharge into the storm drain and ultimately into the Merrimack River. For this violation, DES is seeking a fine of \$2,000.
2. For violating surface water quality standards specified in Env-Ws 1703.10 (b), Env-Ws 603.08 (c) specifies a fine of \$2,000 per violation for each parameter violated. For this violation, DES is seeking \$2,000.
3. The total administrative fine sought by DES for the violations noted above is \$4,000.
4. SNHU agrees to pay the \$4,000 as follows:
 - a. \$1,000 due upon execution of this Agreement by SNHU; and
 - b. \$3,000 to fund a Supplemental Environmental Project consisting of making a donation to the Piscataquog River Local Advisory Committee (“PRLAC”). Penalty proceeds will be used for planning assistance to the Friends of the Greenway in Goffstown to further their efforts to secure ownership of the corridor and develop a vision for the trail in their community. These efforts will build upon Manchester’s plans for the Piscataquog Trailway, thereby linking these communities with a 7-mile trail from the Merrimack River to Goffstown Village. Within 30 days of execution of this

Agreement by SNHU, payment shall be in the form of a certified check made payable to the Southern New Hampshire Planning Commission (the acting fiscal agent for PRLAC), and mailed to:

Southern New Hampshire Planning Commission
438 Dubuque Street
Manchester, NH 03102-3546

5. Payment made under Paragraph V. 4. a. shall be by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

6. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

7. By executing this Administrative Fine by Consent, SNHU waives all rights to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.4, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

8. The effective date of this Administrative Fine by Consent will be the date on which the document is signed by the Vice President of SNHU, the Director of the Water Division, and the Commissioner.

9. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of DES' rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.


Southern New Hampshire University

COPY
By: John C. Miles, Vice President
Duly Authorized

11-26-03
Date

Department of Environmental Services

COPY



Harry T. Stewart, P.E. Director
Water Division

12/9/03
Date

COPY



Michael P. Nolin, Commissioner

12/9/03
Date

cc: Mark Harbaugh - DES Legal Unit
John R. Bush, P.E.-Administrator, DES/WD/WWEB
Sharon L. Ducharme, P.E.-Supervisor, DES/WD/WWEB
Joy Hilton-USEPA, Region I
Public Information Officer -- DES PIP Office
Christopher Morris- SNHU Facility Manager
Dick Ludders -- Acting Chair for PRLAC
Southern NH Planning Commission

bcc: Steve Couture- DES/WD/WMB